

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MAR 19 2001

PATRICK FISHER
Clerk

AMIGOS BRAVOS, a nonprofit
corporation and NEW MEXICO
CITIZENS FOR CLEAN AIR AND
WATER, a nonprofit corporation,

Plaintiffs-Appellants,

v.

No. 99-2346

ENVIRONMENTAL PROTECTION
AGENCY; CAROL BROWNER,
Administrator of the Environmental
Protection Agency; GREG COOK,
EPA Regional Administrator for
Region VI,

Defendants-Appellees.

ORDER

Before **BRORBY** , **KELLY** , and **LUCERO** , Circuit Judges.

Based upon defendants' suggestion that this case became moot during pendency for rehearing because the controversy was resolved by the agency's issuance of a permit, this court issued an order requiring plaintiffs to show cause in writing why this appeal should not be dismissed as moot. In responding to this order, plaintiffs conceded that the case is moot.

Accordingly, the decision of the panel issued January 3, 2001 is vacated and the opinion is withdrawn. The case is remanded to the district court with instructions to vacate its judgment and opinion and order granting defendants' motion to dismiss, dated November 8, 1999. See Stewart v. S. Ry., 315 U.S. 784 (1942); Duke Power Co. v. Greenwood County, 299 U.S. 259, 267 (1936). The district court, however, is not divested of jurisdiction to make a determination on whether plaintiffs are entitled to an award of litigation costs, including attorneys' fees, under section 505(d) of the Clean Water Act. See Citizens for Responsible Gov't State Political Action Comm. v. Davidson, 236 F.3d 1174, 1183 (10th Cir. 2000).

A certified copy of this order shall stand as and for the mandate of this court. The mandate shall issue forthwith.

Entered for the Court
PATRICK FISHER, Clerk

By:
Keith Nelson
Deputy Clerk